IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 10TH AUGUST 2006 / 19TH SRAVANA 1928

ST.Rev..No. 215 of 2003()

TA.398/2003 of .KERALA SALES TAX APPELLATE TRIBUNAL,TVM.
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REVISION PETITIONER/ASSESSEE/APPELLANT

M/S. N.MAHALINGAM & COMPANY,
98, DR.NANJAPPA ROAD, COIMBATORE 641018.

BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN

RESPONDENTS:

STATE OF KERALA, REP.BY ITS FINANCE
SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

BY SPL. G.P. SRI. V.V. ASOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 10/08/2006, ALONG WITH STRV NOS. 203 AND 216 OF 2003 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M. JOSEPH, JJ.

S.T.REV.NOS. 203,215 AND 216 OF 2003

Dated this the 10th day of August, 2006

JUDGMENT

C.R.

Ramachandran Nair,J.

The question raised in the connected Tax Revisions is with regard to rate of tax applicable on diesel engines sold by the petitioner for use in automobiles. The Tribunal has recorded that only diesel engines sold by the petitioner are "metador engines" for use in ambassador cars as replacement of petrol engines originally fitted by the manufacturer. Whatever be the vehicle in which the engine sold by the petitioner is fitted, it is not in dispute that the item sold is metador diesel engines used in automobiles. Original assessments were completed on sales turnover of these engines by applying rate of tax at 10% treating the item as diesel engine falling under Entry 77(1) of the First Schedule to the KGST Act. However, later the Deputy Commissioner in exercise of powers under Section 35(1) of the Act directed revision of assessments on the item at 15% as according to him diesel engines used in automobiles are "motor

engines" falling under Entry 86 of the First Schedule to the Act. Since the question is in which of the two Entries the item will fall, we extract the relevant entries of the First Schedule to the Act, namely, Entries 77(1) and 86 for easy reference:

77.(i)	Machinery, internal combustion engine,marine engine,diesel engine diesel generating sets, ball and roller bearings of all kinds.	At the point of first sale in the State by a dealer who is liable to tax under Section 5.	10%
86.	Motor vehicles,chassis of motor vehicles,motor cycles,motor cycle combinations, motor scooter, mopeds,motorettes, three wheelers,motor vessels motor engines, trailors, motor bodies built on chassis of motor vehicles bodies built on motor vessels or engines and spare parts and accessories thereof.	At the point of first sale in the State by a dealer who is liable to tax under section 5	15%

It is clear from the above that even though diesel engines and all type of internal combustion engines come under Entry 77(1) "motor engines" are squarely covered by Entry 86. The question is whether

a diesel automobile engine sold by the petitioner comes within the description of "motor engines" as referred to in Entry 86. Counsel for the petitioner also referred to the decision of this Court in 82 STC 298 and contended that a specific entry will exclude a general entry. Therefore, the question is which is the specific entry for automobile engine run on diesel. "Motor engines" referred to in Entry 86 do not identify the engine with fuel used. Obviously, the class of engines referred to in Entry 86 under "motor engines" are used in automobiles because Entry 86 provides for tax on motor vehicles, chassis of motor vehicles, motor engines, etc. Therefore we are of the view that the classification of "motor engines" referred to in Entry 86 is only with reference to use of the engines in automobiles, and the motor engines referred to therein are motor vehicle engines, or, in other words, every engine used in automobiles falls within the description of "motor engines" used in motor vehicles and other items referred to in Entry 86. It is immaterial as to what is the fuel used in motor vehicle engines to bring it under Entry 86. It is pertinent to note that marine engines would have come within Entry 86,which covers motor vessels also but for it's specific inclusion in Entry 77 (1), which deals with all kinds of machinery, internal combustion

engines, diesel enginees, etc. Even though the item sold by the petitioner, namely, automobile diesel engine, falls under the general category of "diesel engine" or "internal combustion engine" under Entry 77(1), by virtue of specific inclusion of motor engines or automobile engines in Entry 86, diesel engines referred to in Entry 77 (1) will take in all engines except the automobile diesel engines, which is covered by Entry 86.

In this view of the matter, we uphold the decision of the Tribunal and dismiss the Tax Revisions.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M. JOSEPH)
Judge